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Attorneys for Federal Defendant  
Brook Stewart

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALLEN WAYNE LACKEY,  
Plaintiff,

v.

BROOK STEWART,  
Defendant.

No. 3:12-cv-03242-RS  
[Related Case Nos.: 3:12-cv-03241-RS  
3:12-cv-03244-RS]

**STIPULATION FOR COMPROMISE  
SETTLEMENT AND RELEASE;  
[PROPOSED] ORDER AND CONSENT  
DECREE**

It is hereby stipulated by and between the undersigned Plaintiff and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

WHEREAS, on May 23, 2012, Plaintiff Allen Wayne Lackey filed three nearly identical complaints in Small Claims Court, Superior Court of California, County of Napa, alleging abuse of power, malfeasance of office, conspiracy, fraud, and breach of contract stemming from actions that began on October 6, 2006.<sup>1</sup> Each complaint names a separate defendant: Federal

<sup>1</sup> See *Lackey v. Conte*, 3:12-cv-03241-RS; *Lackey v. Stewart*, 3:12-cv03242-RS; *Lackey v. Huerta*, 3:12-cv-03244-RS.

1 Aviation Administration Aviation Safety Inspector ("ASI") Richard J. Conte, Federal Aviation  
2 Administration ("FAA") ASI Brook Stewart, and FAA Acting Administrator Michael Huerta.

3 WHEREAS, pursuant to 28 U.S.C. § 1442(a)(1), on June 22, 2012, Defendant removed  
4 this case to this Court;

5 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy  
6 and to settle and compromise fully any and all claims and issues that have been raised, or could  
7 have been raised in this action, which have transpired prior to the execution of this Settlement  
8 Agreement ("Agreement");

9 NOW, THEREFORE, in consideration of the mutual promises contained in this  
10 Agreement, and other good and valuable consideration, receipt of which is hereby  
11 acknowledged, the Parties agree as follows:

12 1. **Agreement to Compromise Claims.** The parties do hereby agree to settle and  
13 compromise each and every claim of any kind, whether known or unknown, arising directly or  
14 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms  
15 and conditions set forth in this Agreement.

16 2. **Definition of "United States of America."** As used in this Agreement, the United  
17 States of America shall include its current and former agents, servants, employees, and attorneys,  
18 as well as the Federal Aviation Administration, and/or its current and former agents, servants,  
19 employees, and attorneys.

20 3. **Settlement Terms.** The United States of America agrees to waive collection of the  
21 assessed \$11,000 civil penalty for Plaintiff's failure to surrender his Commercial Pilot Certificate  
22 No. 261867983 (Order of Assessment, FAA Case No. 2009WP250025, affirmed by the National  
23 Transportation Safety ("NTSB") on October 20, 2009, NTSB Docket No. CP-187), the assessed  
24 \$25,000 civil penalty for Plaintiff's failure to surrender his Private Pilot Certificate No.  
25 261867983 (February 3, 2011 Order of Assessment, FAA Case No. 2011WP250007), as well as  
26 to waive the collection of any civil penalty that might be assessed for the events that occurred on  
27 June 2, 2012, wherein Plaintiff, in conjunction with Golden Gate Helicopters, allegedly operated  
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1 his helicopter while carrying passengers ("Settlement Terms"), which agreement shall be in full  
2 settlement and satisfaction of any and all claims, demands, rights, and causes of action of  
3 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,  
4 foreseen and unforeseen personal injuries, damage to property and the consequences thereof,  
5 resulting, and to result, from the subject matter of this settlement, including any claims for  
6 wrongful death, for which Plaintiff or his guardians, heirs, executors, administrators, or assigns,  
7 and each of them, now have or may hereafter acquire against the United States of America.

8       4. **Release.** Plaintiff and his guardians, heirs, executors, administrators or assigns hereby  
9 agrees to accept the Settlement Terms in full settlement and satisfaction of any and all claims,  
10 demands, rights, and causes of action of whatsoever kind and nature, including claims for  
11 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and  
12 unforeseen personal injuries, damage to property and the consequences thereof which they may  
13 have or hereafter acquire against the United States of America on account of the same subject  
14 matter that gave rise to the above-captioned action, including any future claim or lawsuit of any  
15 kind or type whatsoever, whether known or unknown, and whether for compensatory or  
16 exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or assigns  
17 further agrees to reimburse, indemnify and hold harmless the United States of America from and  
18 against any and all such causes of action, claims, liens, rights, or subrogated or contribution  
19 interests incident to or resulting from further litigation or the prosecution of claims by Plaintiff  
20 or his guardians, heirs, executors, administrators or assigns against any third party or against the  
21 United States, including claims for wrongful death.

22       5. **Dismissal of Action.** In consideration of the Settlement Terms and the other terms of  
23 this Agreement, Plaintiff shall immediately upon execution of this Agreement also execute a  
24 Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation of  
25 Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that could have been  
26 asserted in this action. The fully executed Stipulation of Dismissal will be held by Defendant's  
27 attorney and will be filed within five (5) business days of receipt of the Airworthiness  
28 Certificate, pursuant to the terms in Paragraph 11.

1           6. **No Admission of Liability.** This stipulation for compromise settlement is not  
 2 intended to be, and should not be construed as, an admission of liability or fault on the part of the  
 3 United States, and it is specifically denied that it is liable to the Plaintiff. This settlement is  
 4 entered into by all parties for the purpose of compromising disputed claims and avoiding the  
 5 expenses and risks of further litigation.

6           7. **Parties Bear Their Own Costs.** It is also agreed, by and among the parties, that the  
 7 respective parties will each bear their own costs, fees, and expenses.

8           8. **Attorney's Fees.** It is also understood by and among the parties that pursuant to Title  
 9 28, United States Code, Section 2678, attorney's fees for services rendered in connection with  
 10 this action shall not exceed 25 per centum of the amount of the compromise settlement.

11           9. **Authority.** The persons signing this Agreement warrant and represent that they  
 12 possess full authority to bind the persons on whose behalf they are signing to the terms of the  
 13 settlement.

14           10. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code  
 15 Section 1542 are set forth below:

16               "A general release does not extend to claims which the creditor does not know or  
 17 suspect to exist in his or her favor at the time of executing the release, which if  
 18 known by him or her must have materially affected his or her settlement with the  
 debtor."

19 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his  
 20 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and  
 21 all rights he may have pursuant to the provision of that statute and any similar provision of  
 22 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability  
 23 of the government for damages pertaining thereto are found hereinafter to be other than or  
 24 different from the facts now believed by them to be true, the Agreement shall be and remain  
 25 effective notwithstanding such material difference.

26           11. **Consent Decree.** The parties further agree that Allen Wayne Lackey be enjoined  
 27 from operating any aircraft, both commercially and privately, until such time as he obtains valid,  
 28 effective and properly issued pilot certificates from the FAA. The parties further agree that

1 Plaintiff will immediately surrender the Airworthiness Certificate for helicopter Bell 206 B,  
 2 Serial No. 1792 (Registration Number N62HF) to the U.S. Attorney's Office, care of Assistant  
 3 U.S. Attorney Ann Marie Reding, 450 Golden Gate Avenue, Box 36055, San Francisco,  
 4 California 94102-3495.<sup>2</sup> Further, Plaintiff will be enjoined from operating any aircraft unless  
 5 that aircraft is properly certificated, having a current and valid Airworthiness Certificate and  
 6 Aircraft Registration Certificate.

7 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff  
 8 or Plaintiff's counsel based on payment of the Settlement Terms, Plaintiff or Plaintiff's counsel  
 9 shall be solely responsible for paying any such determined liability from any government  
 10 agency. Nothing in this Agreement constitutes an agreement by the United States of America  
 11 concerning the characterization of the Settlement Terms for the purposes of the Internal Revenue  
 12 Code, Title 26 of the United States Code.

13 13. **Construction.** Each party hereby stipulates that it has been represented by and has  
 14 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it  
 15 has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of  
 16 and understands all of the terms of the Agreement and the legal consequences thereof. For  
 17 purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to  
 18 this Agreement and shall not, therefore, be construed against any Party for that reason in any  
 19 subsequent dispute.

20 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or  
 21 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in  
 22 any way be affected or impaired thereby.

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24  
 25 <sup>2</sup> Allen Wayne Lackey is the President of Wine Country Helicopter Leasing, Inc., to  
 26 which helicopter Bell 206 B, Serial No. 1792 (Registration Number N62HF) is registered. On  
 27 July 5, 2012, the FAA issued an emergency order of suspension ordering Mr. Lackey to  
 28 surrender the Airworthiness Certificate of N62HF pursuant to 49 U.S.C. §46105(c) (determining  
 that an emergency exists related to safety in air commerce and ordering immediate  
 suspension)(FAA Case No. 2012WP250036).



1        15. **Integration.** This instrument shall constitute the entire Agreement between the  
 2 parties, and it is expressly understood and agreed that the Agreement has been freely and  
 3 voluntarily entered into by the parties hereto with the advice of counsel, who have explained the  
 4 legal effect of this Agreement. The parties further acknowledge that no warranties or  
 5 representations have been made on any subject other than as set forth in this Agreement. This  
 6 Agreement may not be altered, modified or otherwise changed in any respect except by writing,  
 7 duly executed by all of the parties or their authorized representatives.

8 DATED: October 23, 2012

  
 PLAINTIFF ALLEN WAYNE LACKEY

10 DATED: October 23, 2012

  
 DOUGLAS PHARR  
 Plaintiff's Attorney

12 DATED: October \_\_, 2012

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 LISA TOSCANO  
 FAA Western-Pacific Region

14 DATED: October \_\_, 2012

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 ANN MARIE REDING  
 Assistant United States Attorney  
 Attorney for Defendant

17                    **[PROPOSED] ORDER AND CONSENT DECREE**

18                    PURSUANT TO STIPULATION, IT IS SO ORDERED.

19                    It is further ORDERED, DIRECTED AND DECREED that Allen Wayne Lackey be  
 20 enjoined from operating any aircraft, both commercially and privately, until such time as he  
 21 obtains valid, effective and properly issued pilot certificates from the Federal Aviation  
 22 Administration. The Court further orders Mr. Lackey to immediately surrender the  
 23 Airworthiness Certificate for helicopter Bell 206 B, Serial No. 1792 (Registration Number  
 24 N62HF) to the U.S. Attorney's Office, care of Assistant U.S. Attorney Ann Marie Reding, 450  
 25 Golden Gate Avenue, Box 36055, San Francisco, California 94102-3495. It is further ordered  
 26 that Mr. Lackey be enjoined from operating any aircraft unless that aircraft is properly  
 27 certificated, having a current and valid Airworthiness Certificate and Aircraft Registration  
 28

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8        DATED: October \_\_, 2012

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 PLAINTIFF ALLEN WAYNE LACKEY

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 10        DATED: October \_\_, 2012

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 DOUGLAS PHARR  
 Plaintiff's Attorney

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 12        DATED: October 19, 2012

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*Lisa J. Toscano*  
 LISA TOSCANO  
 FAA Western-Pacific Region

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 14        DATED: October 23, 2012

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*Ann Marie Reding*  
 ANN MARIE REDING  
 Assistant United States Attorney  
 Attorney for Defendant

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 16  
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1 Certificate. Nothing in this Agreement shall preclude the FAA from pursuing the civil penalties  
2 outlined in Paragraph 3 should Plaintiff operate any aircraft without first obtaining valid,  
3 effective and properly issued pilot certificates and unless that aircraft has a current and valid  
4 Airworthiness Certificate and Aircraft Registration Certificate.

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6 Date: 10/25/12

  
7 Hon. Richard Seeborg  
8 UNITED STATES DISTRICT JUDGE  
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